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June 6, 2011

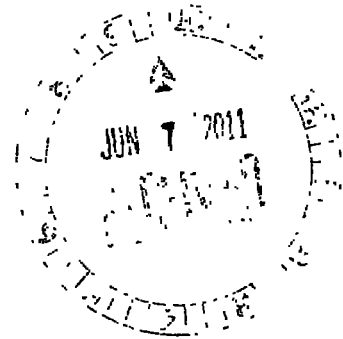
VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

FEE RECEIVED

JUN 07 2011

**SURFACE
TRANSPORTATION BOARD**



Re: **Finance Docket No. 35530** **229727**
Arkansas Midland Railroad Company, Inc. – Trackage
Rights Exemption – Caddo Valley Railroad Company

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption of Arkansas Midland Railroad Company, Inc. Pursuant to 49 C.F.R. § 1180.2(d)(7)**, dated June 6, 2011. A check in the amount of \$1,200.00, representing the appropriate fee for this filing, is being submitted under separate cover.

One extra copy of this transmittal letter and of the Notice also are enclosed. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Arkansas Midland
Railroad Company, Inc.

FILED

JUN 07 2011

**SURFACE
TRANSPORTATION BOARD**

TJL:tl

Enclosures

FILED
OFFICE OF PROCEEDINGS

JUN 07 2011

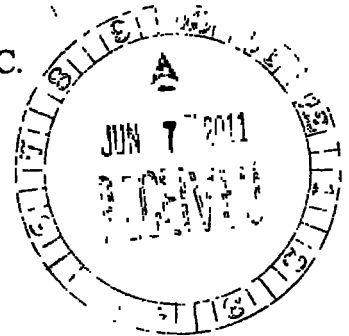
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Public Record

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35530

ARKANSAS MIDLAND RAILROAD COMPANY, INC.
-- TRACKAGE RIGHTS EXEMPTION --
CADD O VALLEY RAILROAD COMPANY



**VERIFIED NOTICE OF EXEMPTION
OF
ARKANSAS MIDLAND RAILROAD COMPANY, INC.
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

William C. Sippel
Thomas J. Litwiler
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Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

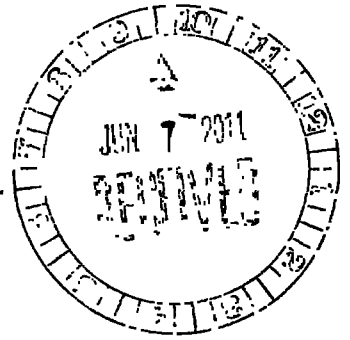
**ATTORNEYS FOR ARKANSAS MIDLAND
RAILROAD COMPANY, INC.**

Dated: June 6, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35530

ARKANSAS MIDLAND RAILROAD COMPANY, INC.
-- TRACKAGE RIGHTS EXEMPTION --
CADDO VALLEY RAILROAD COMPANY



**VERIFIED NOTICE OF EXEMPTION
OF
ARKANSAS MIDLAND RAILROAD COMPANY, INC.
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Arkansas Midland Railroad Company, Inc. ("AKMD"), a common carrier by rail, hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) for its acquisition of local trackage rights over a line of railroad of Caddo Valley Railroad Company ("CVR") between a connection with Union Pacific Railroad Company ("UP") at milepost 426.88 in Gurdon, Arkansas and milepost 429.45 north of Gurdon, a distance of approximately 2.57 miles (the "Gurdon Segment"). Simultaneously with this notice, AKMD is filing a petition to partially revoke the applicable class exemption to allow the proposed trackage rights to become effective on June 15, 2011, twenty-two days earlier than would otherwise be the case.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), AKMD submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

AKMD is a Class III common carrier by rail which owns or leases and operates rail lines at a number of locations in the State of Arkansas. AKMD is a wholly-owned subsidiary of Pinsly Railroad Company, a non-carrier holding company which also controls six other Class III rail carriers in Arkansas, Florida and Massachusetts. See Pinsly Railroad Company --

Continuance in Control Exemption -- Arkansas Midland Railroad Company, Inc., Finance Docket No. 32001 (ICC served March 6, 1992); Pinsly Railroad Company -- Control Exemption -- Warren & Saline River Railroad Company, Finance Docket No. 35293 (STB served November 3, 2009).

AKMD has operated the Gurdon Segment since September 20, 2010 pursuant to emergency service authority granted in Arkansas Midland Railroad Company, Inc. -- Alternative Rail Service -- Line of Caddo Valley Railroad Company, Finance Docket No. 35416 (STB served September 17, 2010, October 10, 2010 and February 11, 2011).¹ That emergency service authority expires on June 14, 2011. AKMD has concluded negotiations with CVR and CVR's primary lender to acquire the Gurdon Segment pursuant to AKMD's statutory right of first refusal under 49 U.S.C. § 10907(h),² and had expected to close that transaction on May 26, 2011. Closing has been delayed, however, due to issues with a secondary CVR lender. Because it is unclear whether emergency service authority can be renewed or re-issued beyond the 270-day period specified in 49 U.S.C. § 11123(c)(1), AKMD and CVR have agreed to enter into a trackage rights agreement that will allow AKMD to continue to provide rail service on the Gurdon Segment until the sale of that segment to AKMD is completed.

¹ The mileposts of the Gurdon Segment are changed slightly in this trackage rights notice of exemption from those in the emergency service proceeding. In one instance (the connection with UP at Gurdon), this is a technical correction (of one-hundredth of a mile) based on AKMD's physical observation. At the other end of the segment, the milepost has been shortened to exclude trackage (and an attendant grade crossing) that was not needed or used for any rail service purpose.

² CVR acquired the Gurdon Segment and the remainder of AKMD's Norman Branch in 2000 pursuant to the feeder line provisions of 49 U.S.C. § 10907. See Caddo Antoine et al. -- Feeder Line Acq. -- Arkansas Midland RR, 4 S.T.B. 326 (1999), 4 S.T.B. 610 (2000), aff'd sub nom. GS Roofing Products Co. v. STB, 262 F.3d 767 (8th Cir. 2001).

The full name and address of the applicant carrier herein is as follows:

Arkansas Midland Railroad Company, Inc.
Jones Mill Industrial Park
314 Reynolds Road, Building 41
Malvern, AR 72104
(501) 844-4444

Any questions concerning this Notice should be sent to AKMD's representative at the following address:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1508

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

Subject to the Board's issuance of a decision expediting the effective date of this exemption, AKMD intends to consummate the proposed trackage rights transaction on June 15, 2011, the day after AKMD's current emergency service authority on the Gurdon Segment expires.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed trackage rights will allow AKMD to continue to provide rail service on the Gurdon Segment, pending transfer of that rail line to AKMD. CVR has not been able to provide rail service on the Gurdon Segment for the past nine months, and is not expected to resume operations.

States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

AKMD owns and operates over rail property in the State of Arkansas.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map of the rail line over which AKMD proposes to acquire trackage rights is attached hereto as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A draft of the Trackage Rights Agreement to be executed by AKMD and CVR is attached hereto as Exhibit 2. An executed version of the agreement will be submitted to the Board immediately upon signature.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

The proposed trackage rights transaction involves only Class III rail carriers. Accordingly, pursuant to 49 U.S.C. § 11326(c), no employee protective conditions may be imposed on this transaction.

Caption Summary: 49 C.F.R. § 1180.4(g)(2)(i)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached hereto as Exhibit 3.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of trackage rights by AKMD is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), AKMD's proposed trackage rights acquisition also is exempt from historic preservation reporting requirements.

Respectfully submitted,

By:



William C. Sippel

Thomas J. Litwiler

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 920

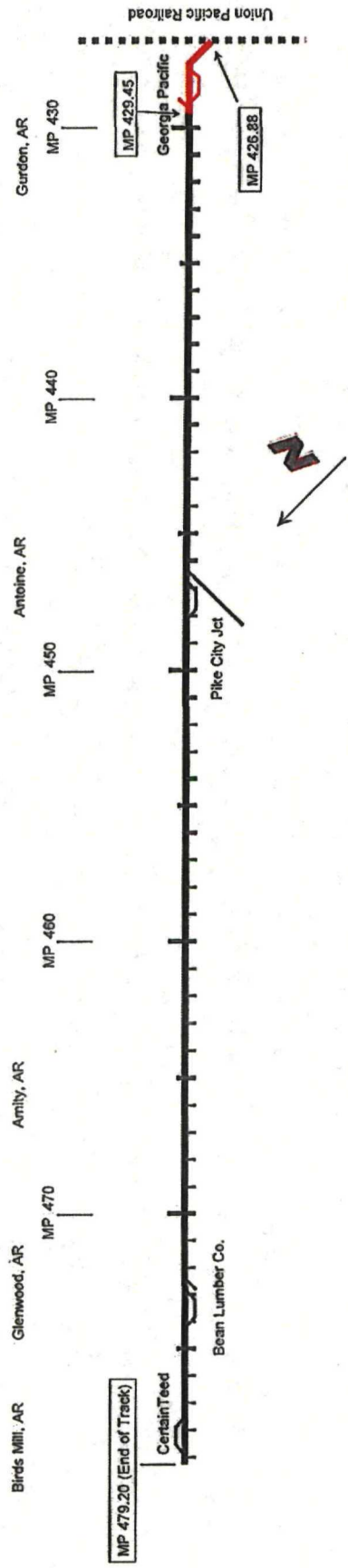
Chicago, Illinois 60606-2832

(312) 252-1500

**ATTORNEYS FOR ARKANSAS MIDLAND
RAILROAD COMPANY, INC.**

Dated: June 6, 2011

CADDO VALLEY RAILROAD



TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT ("Agreement") is made this ____ day of June, 2011, by and between Caddo Valley Railroad Company ("CVR") and Arkansas Midland Railroad Company, Inc. ("AKMD").

WHEREAS, CVR is the owner of a line of railroad between Milepost 426.88 and Milepost 429.45 at Gurdon, Arkansas, as shown in red on the print attached hereto as Exhibit A (the "Line");

WHEREAS, in September, 2010, CVR advised industries on the Line, AKMD and the Surface Transportation Board ("STB") that CVR was experiencing financial difficulty and would be unable to continue rail service on the Line and would have to shut down;

WHEREAS, pursuant to emergency service authority granted in Arkansas Midland Railroad Company, Inc. – Alternative Rail Service – Line of Caddo Valley Railroad Company, Finance Docket No. 25416 (STB served September 17, 2010, October 10, 2010 and February 11, 2011) and the Agreement for Temporary Operation of Rail Line dated September 9, 2010 between CVR and AKMD, AKMD has operated the Line since September 20, 2010 pending negotiations with CVR to purchase the Line;

WHEREAS, AKMD has negotiated with CVR and CVR's primary lender to purchase the Line pursuant to AKMD's statutory right of first refusal under 49 U.S.C. § 10907(h);

WHEREAS, the STB's emergency service authority and the September 9, 2010 Agreement by their terms will expire on June 14, 2011 and AKMD's purchase of the Line may not have been completed by that time;

WHEREAS, AKMD desires to obtain local trackage rights over the Line in order to continue rail service to industries on the Line pending AKMD's purchase of the Line; and

WHEREAS, CVR is willing to grant such trackage rights to AKMD under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. **DESCRIPTION OF TRACKAGE RIGHTS.** CVR hereby grants to AKMD local trackage rights on the Line with the right to provide rail service to all industries on the Line using its own locomotives, cars and equipment with its own crews (the "Trackage Rights"). Such Trackage Rights shall include the right to use any part of the Line for the purposes of switching, storing or servicing of cars or equipment and making up and breaking up of trains. AKMD, at its sole cost and expense, shall obtain any necessary authority or exemption from the STB for the Trackage Rights granted herein. During the term of this Agreement, CVRR shall not operate on the Line without the prior consent of AKMD and shall not grant to anyone any right to use or operate on the Line.

2. **COMPENSATION.** The sole compensation to CVR for the Trackage Rights shall be AKMD's provision of rail service to industries on the Line and assumption of the cost of

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routine maintenance of the Line, as provided herein. AKMD shall be entitled to retain all revenue and payments from shippers or Union Pacific Railroad Company ("UP") for AKMD's handling of cars under the Trackage Rights. AKMD shall also be entitled to retain for its account all charges for ancillary services provided by AKMD, such as demurrage and car storage, as provided in AKMD's tariff. CVR shall continue to administer all leases, licenses, easements and similar agreements with third parties pertaining to the Line and collect and retain all revenue therefrom.

3. **MAINTENANCE AND OPERATION OF THE LINE.** AKMD, at its sole cost and expense, shall inspect and maintain the Line to a condition that complies with the regulations of the Federal Railroad Administration for excepted track. All rails, ties, ballast and other track materials installed on the Line by AKMD during the term of this Agreement shall become the property of CVR. CVR hereby grants permission to AKMD to use any track materials in CVR's inventory in the maintenance of the Line, at no charge to AKMD. AKMD shall be solely responsible for effecting any necessary arrangements with UP for the interchange of cars at Gurdon. AKMD shall be solely liable for all income taxes and other governmental amounts imposed upon AKMD's operating revenues derived from the Trackage Rights. AKMD shall not be responsible for any property taxes, levies or other governmental amounts imposed on the Line. Upon expiration or termination of this Agreement, unless AKMD has agreed to purchase the Line, AKMD shall return the Line to CVR in substantially the same condition it was in on the date of the joint inspection, normal wear and tear excepted.

4. **EQUIPMENT.** AKMD, at its sole cost and expense, shall provide such locomotives and railcars as are necessary to provide rail service to industries on the Line. AKMD shall be responsible for car hire on all railcars handled by AKMD under the Trackage Rights. AKMD shall have no responsibility whatsoever for the maintenance of, repairs to, or car hire on, any bad-ordered railcars or locomotives that were on the Line at the time AKMD commenced emergency service on the Line.

5. **LIABILITY.** AKMD shall protect, indemnify, defend and hold harmless CVR, its directors, officers, employees and agents, from and against any and all suits, claims, causes of action, demands, losses, liabilities and expenses arising out of or connected with AKMD's use of the Line hereunder.

6. **INSURANCE.** AKMD shall maintain railroad liability insurance and all-risks property insurance coverage for its operations on the Line in the same amounts as AKMD currently maintains for operation of its existing rail lines.

7. **TERM AND TERMINATION.** This Agreement shall become effective on the date STB authorization or an exemption therefrom becomes effective and shall continue in effect until AKMD purchases the Line from CVR (the "Term"), unless sooner terminated by AKMD hereunder. Notwithstanding any other provision in this Agreement, AKMD shall have the right to terminate this Agreement upon seven (7) days' written notice to CVR. Termination of this Agreement hereunder shall not relieve or release either party hereto from any obligations incurred hereunder during the Term of this Agreement. AKMD, at its sole cost and expense, shall be responsible for obtaining any necessary STB authority or exemption for the discontinuance of the Trackage Rights.

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8. **GENERAL NOTICE.** All notices pursuant to this Agreement shall be in writing and addressed to the other party hereto at the address set forth below. All such notices shall be deemed duly given if personally delivered or if deposited in the United States mail, registered or certified, return receipt requested.

If to CVR:

Caddo Valley Railroad Company
Attn: Tim Bean, President
P.O. Box 2118
Glenwood, AR 71943

If to AKMD:

Charles Laggan
Vice President and General Manager
Arkansas Midland Railroad Company, Inc.
314 Reynolds Road, Building 41
Malvern, AR 72104

9. **ASSIGNMENT.** Neither party hereto may assign this Agreement to any third party without the prior written consent of the other party hereto.

10. **AMENDMENTS.** No modification, addition or amendment to this Agreement shall be binding unless executed in writing by both parties hereto.

11. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas and applicable federal law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year written above.

CADDO VALLEY RAILROAD COMPANY

By: _____

Its: _____

ARKANSAS MIDLAND RAILROAD COMPANY, INC.

By: _____

Its: _____

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35530

**ARKANSAS MIDLAND RAILROAD COMPANY, INC.
-- TRACKAGE RIGHTS EXEMPTION --
CADD VALLEY RAILROAD COMPANY**

Caddo Valley Railroad Company ("CVR") has agreed to grant local trackage rights to Arkansas Midland Railroad Company, Inc. ("AKMD") over CVR's line of railroad between the connection with Union Pacific Railroad Company at milepost 426.88 in Gurdon, Arkansas and milepost 429.45 north of Gurdon, a distance of approximately 2.57 miles (the "Gurdon Segment"). AKMD currently operates the Gurdon Segment pursuant to emergency service authority granted by the Board under 49 U.S.C. § 11123 and 49 C.F.R. § 1146. AKMD has requested that the trackage rights become effective on June 15, 2011.

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

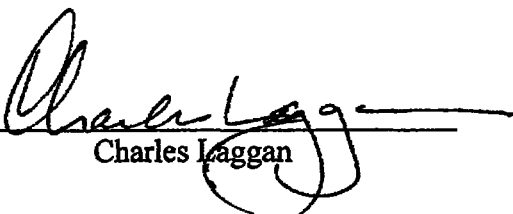
Dated: June __, 2011

By the Board

VERIFICATION

State of Arkansas)
)
County of Hot Spring) ss:

Charles Laggan, being duly sworn, deposes and says that he is Vice President and General Manager of Arkansas Midland Railroad Company, Inc., that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Charles Laggan

SUBSCRIBED AND SWORN TO
before me this 6 day
of June, 2011.



Notary Public

My Commission expires:

